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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

19 Cr. 0529 (PAE)

5 KELLY RIVAS,

6 Defendant.

7 -----x

8
9 October 7, 2019
3:59 p.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

BY: DANIELLE SASSOON

17 Assistant United States Attorney

18 ANGUS JAMES BELL

19 Attorney for Defendant

20 - also present -

21 Reut Baer, Government Intern

22 Spanish Language

23 Interpreters: Paula Gold

Gunilla Medina

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1 THE CLERK: In the matter of the United States against
2 Kelly Rivas, counsel, state your appearance for the record,
3 please.

4 MS. SASSOON: Good afternoon, your Honor. Danielle
5 Sassoon for the government, and I'm joined at counsel table by
6 Reut Baer, an intern in our office.

7 THE COURT: Very good. Good afternoon, Ms. Sassoon,
8 and good afternoon, Ms. Baer.

9 MR. BELL: Good afternoon, Judge. James Bell for Ms.
10 Rivas.

11 THE COURT: Very good. Good afternoon, Mr. Bell. And
12 good afternoon, of course, to you, Ms. Rivas.

13 And I will note for the record that Ms. Rivas is
14 assisted today by a court-certified Spanish translator.

15 Ms. Rivas, if at any point you don't understand what
16 is being said to you by the translator, please wave your hand,
17 raise your hand, so that I can know that immediately. Will you
18 agree to do that?

19 THE DEFENDANT: Yes.

20 THE COURT: OK. I understand, Mr. Bell, that we are
21 here for a change of plea proceeding, is that correct?

22 MR. BELL: Yes.

23 THE COURT: All right. And I understand that your
24 client intends today to plead guilty to Count One of the
25 Indictment in this case, 19 Crim. 529, is that right?

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1 MR. BELL: Yes, a single Indictment, correct.

2 THE COURT: Right.

3 And, Ms. Rivas, is that correct, that you intend today
4 to plead guilty to Count One of the Indictment?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. And the Indictment -- there is
7 a signed plea agreement which counsel have handed up. I am
8 going to mark it as Government Exhibit 1. Later in this
9 proceeding, I will ask counsel and the defendant about the
10 terms of that agreement.

11 Before we proceed, though, I had a question myself and
12 I thought it worth airing it before we get going. I read the
13 plea agreement, and it tabulates a guideline range of 33 to 41
14 months based on a total offense level of 20 and a criminal
15 history category of I. Both parties agree not to move for a
16 departure upward or downward. Both parties reserve the right
17 to move for a variance upward or downward.

18 Ms. Sassoon, I reread the transcript of the late
19 August hearing at which you told me in graphic terms about the
20 nature of the case, and I wanted to make sure that Ms. Rivas
21 was on notice as to your intentions here. Given the dramatic
22 quality of the allegations aired about Ms. Rivas at the time of
23 the bail hearing and the initial conference, it appeared to me
24 not implausible that the government would be actively
25 considering an upward variance here. And I am not suggesting

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1 that you should do that or not, but given the crime that is the
2 subject of the guilty plea, it doesn't appear by its elements
3 necessarily to capture some of the conduct that you proffered
4 to me. I want to make sure that Ms. Rivas is going into this
5 eyes open.

6 MS. SASSOON: Yes, your Honor. Given the nature of
7 the organization involved, on its behalf Ms. Rivas was
8 extorting dues, it is possible that the government will seek a
9 sentence at the high end of the guidelines or above the
10 guidelines. No decision has been made yet on what sentence
11 we'll be seeking. I have not consulted on that question with
12 any supervisor who would have the authority to approve or not
13 approve such a request. I haven't made such a request at this
14 time, but it is possible and it is permitted by the plea
15 agreement.

16 THE COURT: OK. Mr. Bell, over to you. I want to
17 make sure that your client is on notice of the sentencing
18 outcomes or potential outcomes here. It is certainly the case,
19 as Ms. Sassoon points out, that the plea agreement preserves
20 the right to move for an upward variance on the government's
21 part, which preserves the right for the defense to move for a
22 downward variance. Given the facts of the case as they were
23 proffered to me at the initial conference, I don't think I am
24 going out on a limb here to say that this is a case in which it
25 is plausible to imagine the government on its motion or the

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1 Court sua sponte considering whether an upward variance was
2 merited. The facts at least as proffered, if they turn out to
3 be stipulated to or established in the sentencing process,
4 arguably are not ones that are captured by the guideline
5 provisions here. I want to make sure you and your client have
6 discussed that and understand that that is a risk here.

7 MR. BELL: Judge, in any matter to which I speak for
8 my client, I always advise my client that it is always up to
9 the Court to make the determination of what the actual sentence
10 is. I also will go through the 3553 factors and make sure that
11 clients understand that there are mitigating and also there are
12 factors that do warrant an upward variance in any case. But
13 particularly in this particular case, I have had conversations
14 with the government and with my client regarding what
15 particularly she is pleading guilty to. In fact, as I
16 understand it, what she is pleading guilty to is extorting one
17 person -- a person -- and that the other allegations we will
18 have to deal with, you know, once we get to that portion of the
19 PSR and whether or not we are objecting and that sort of thing.

20 But, yes, for the purpose of this, Judge, yes, I have
21 had extensive conversations with my client regarding what the
22 possibilities would be in light of the fact that she has never
23 been convicted before and, also, from the other side, if you
24 will, from the fact that the government may have a different
25 view of her role that may come out as relevant conduct and the

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1 like. But -- so I leave it at that. Yes.

2 THE COURT: OK. The important thing is this. There
3 is a disjuncture, as I see it, between what was proffered to me
4 as the offense conduct at the initial conference and the
5 conduct that is necessary to make out the discrete crime to
6 which the defendant is pleading.

7 Assuming that the government sticks to its view as
8 proffered at the initial conference of what the offense conduct
9 was, it is plausible that the government or the Court, or both,
10 would regard it as viable that a sentence ought to be above the
11 guideline range here. I'm not in any way saying anything other
12 than I'm spotting that as an issue; that is all I am doing.
13 But I just want to make sure that your client is on notice of
14 that possibility given the proffers I received about MS-13 and
15 murder.

16 MR. BELL: Well, my client is not involved in murder,
17 Judge.

18 THE COURT: I appreciate that, but a proffer from the
19 government at the last conference was that the defendant was
20 aware of what was being facilitated by facilitating MS-13.
21 That is not substantially captured by the guideline calculation
22 here. There may be other dimensions of the conduct here that
23 are not captured, and I don't want there to be any surprise if
24 later on that becomes part of the government's sentencing
25 narrative and I take that seriously as an aggravating factor.

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1 MR. BELL: Well, Judge, I don't know if we want to get
2 into this particular fight at this point. I do not believe
3 that my client was part of or that she knew that someone was
4 murdered or the like. So I want to make I guess the record
5 clear on that point.

6 THE COURT: Look, I fully respect and understand that.
7 The government's proffer at the bail hearing and at the initial
8 conference is that your client knew the nature of the
9 organization that she was a participant in and understood what
10 was being facilitated. I have no idea what the facts are. It
11 may be that there is a profound factual difference among you.
12 It may be that the government has changed its mind. But if the
13 government persists in that view and seeks to put before the
14 Court facts along those lines at sentencing, any court would
15 have to seriously ask the question does the guideline range
16 capture that conduct or is it insufficient to capture it. So
17 without prejudging the issue, I just want to make sure a
18 hundred percent sure that your client is on notice of that
19 possible scenario.

20 MR. BELL: Judge, as I mentioned, I always tell my
21 clients -- and this one is no different -- that the court has
22 wide latitude to make determinations of what a sentence will
23 be. If we get to the point where we believe that a fact comes
24 up at sentencing either through the PSR or through argument and
25 it would lead to other hearings or the like, then I am well

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1 prepared to do that as well. Because I, too, even though the
2 government may have its view from a position where they are
3 looking to have an enhanced sentencing guideline, my position
4 would be that I believe I have factors that I would think are
5 as much warranting a below-guidelines' sentence.

6 THE COURT: I appreciate that. I am merely covering
7 the worst-case scenario for your client, which is that the
8 facts established, if that's what it took, are along the lines
9 of what was earlier proffered, and there is a view either from
10 the government, the Court, or both that an above-guidelines'
11 sentence is warranted as a matter of variance. I just want to
12 make sure your client knows that that is a possibility. That
13 is the only question I've got.

14 MR. BELL: That is very fair, Judge. As I indicated,
15 I believe she understands it.

16 But with her sitting here and with the Court
17 highlighting that fact, I also want her to hear me say that I
18 believe that there is much to be gained from mitigation in her
19 particular case that would warrant a variance opposite that
20 may --

21 THE COURT: I have no idea that the government is on
22 notice of that as a possibility that could run to a
23 below-guideline sentence.

24 My concern is that Ms. Rivas, who is not a regular
25 player in sentencings here, may not be aware of the spectrum of

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1 possibilities here, and I wanted to make specifically sure she
2 is aware of this.

3 MR. BELL: Yes, Judge. I have had that
4 conversation --

5 THE COURT: OK.

6 MR. BELL: -- and I believe she was aware of that.

7 THE COURT: Very good. Ms. Sassoon, I saw you rising
8 a couple of times.

9 MS. SASSOON: Yes, your Honor. In light of this
10 question and what's been said, I just wanted to make a record
11 about something pertaining to the plea discussion. Obviously
12 the agreement here is the full agreement between the parties,
13 but there was some discussion during plea negotiations about
14 what enhancements did or did not apply. Some of what you have
15 alluded to are things that are not amenable to a sentencing
16 enhancement with respect to extortion. But one enhancement
17 that was discussed and contemplated was an enhancement with
18 respect to actual bodily injury, which is not ultimately
19 contained in this plea, although I informed defense counsel
20 that we would nonetheless be putting before the Court that
21 individuals of MS-13 were beat up for failure to pay dues but
22 we would not be in a position to prove up the exact nature of
23 those injuries such that we could establish that guideline with
24 certainty. So, that's not in the plea, but we will be putting
25 before the Court facts about individuals suffering beatings.

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1 THE COURT: All right. That's helpful. So, now, may
2 I ask you, Ms. Sassoon, I took away from our colloquy five or
3 six weeks ago that your view is that Ms. Rivas was broadly
4 aware of the nature of MS-13, including the fact that some of
5 what MS-13 did was to take lives, and that she was aware of
6 that at the time of the conduct alleged in the Indictment. Is
7 that still the government's view?

8 MS. SASSOON: Yes.

9 THE COURT: OK. And I take it that is something that
10 you might be putting before me or, if controverted, attempting
11 to prove in connection with sentencing?

12 MS. SASSOON: Yes, your Honor.

13 THE COURT: You might not but you are reserving the
14 right?

15 MS. SASSOON: Yes, an I don't know exactly the nature
16 of that evidence. I think we would have a good argument based
17 on circumstantial and inferential evidence of that, given what
18 we all know about MS-13 and the fact that she was a full-blown
19 participant in the gang, but we would likely have evidence
20 beyond that as well.

21 THE COURT: OK. Look, I'm not doing anything other
22 than just making sure that there is transparency for all
23 concerned, because it is relatively unusual that there is as
24 big a delta between the factual proffer and initial conference
25 and the specific count that the defendant is pleading guilty

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1 to. It leapt out at me as a situation that called on me to
2 assure full awareness on the defendant's behalf.

3 MS. SASSOON: Yes, your Honor.

4 THE COURT: All right. Mr. Bell, anything further?

5 MR. BELL: Just on that point of what she knew and
6 whether or not she had a broad understanding of what MS-13 did
7 or what they did not do. This is, to my understanding, a
8 transnational organization that has been alleged to be part of
9 a lot of different sort of allegations.

10 THE COURT: Right.

11 MR. BELL: Both somewhere and in the United States. I
12 take it very seriously when there is an allegation that my
13 client knew -- in sort of the vacuum that we stand here, that
14 she knew about X, Y, Z. I have not been given that information
15 as I stand here about what she was alleged to have known and
16 when she was alleged to have known that. So I stand here a
17 little bit concerned that now we are in this position where the
18 government and the Court are asking what she allegedly knew.
19 Because to be very candid, I have had very little discovery on
20 these issues, especially as the Court asks about homicides or
21 about injuries and the like, that to now leave it up to some
22 PSR, the government's view without --

23 THE COURT: It is not going to be ever up to the PSR
24 or the government's view, it is ultimately up to the Court
25 based on reliable fact finding. The government may or may not

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1 assert, based on what it believes the evidence shows, any of
2 these things. If they do, you will have an opportunity to
3 combat that, and you will be entitled to discovery on that
4 point before any Fatico hearing would ensue. I don't know if
5 we're going to go there. I was merely trying to make sure your
6 client was on notice of the possible scenario, and I certainly
7 wasn't trying to nudge Ms. Sassoon to pursue that route. I was
8 merely trying to issue a spot.

9 MR. BELL: Fair enough, Judge, but I also stand to
10 make these points because my client and I, based on
11 conversations I have had with the government and our
12 understanding, as Ms. Sassoon has said, we have had a
13 significant amount of conversations in these plea negotiations
14 in which I think that we are very clear, or at least I was very
15 clear about what she was pleading guilty to and what she was
16 not pleading guilty to. And for that sort of conversation to
17 be had again now in front of my client, I would imagine that
18 that sort of conversation would make her -- or particularly
19 make her concerned because I have had certain conversations
20 with my client based on my conversation with the client.

21 So it has been brought up, Judge. It was not my
22 intention, of course, to have this conversation. I was hoping,
23 of course, that it would happen.

24 THE COURT: That's fine. Look, I'm not here to
25 scuttle a plea. I'm here to make sure that the concept of

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1 relevant conduct is something that you've made your client
2 aware of -- you say you have -- and that it is a possibility
3 that the government may allege facts outside the scope of those
4 necessary to prove up this count that would, if established,
5 count as relevant conduct. It sounded to me a moment ago that
6 you have had that conversation with your client and she is
7 aware of it. I'm prepared to proceed with the proceeding here.
8 If you feel that you need more time to speak with your client,
9 be my guest.

10 MR. BELL: I guess my only point, Judge, is that there
11 is a vast valley, if you will, between what the government
12 indicated is for injury as a result of something and homicide.
13 So when the Court brought up this issue of "homicide," I have
14 never had a conversation with the government regarding my
15 client's complicity or knowledge of a homicide.

16 THE COURT: Sorry. Complicity and knowledge are
17 completely different things here. The point that I was
18 making -- and Ms. Sassoon never proffered at the initial
19 conference that your client had some hand in a homicide. The
20 proffer was that your client had a hand in MS-13 and that she
21 understood what MS-13 was about, and its objectives included,
22 among other things, homicides. That's the sum and total
23 substance of what I took away from the government's proffer at
24 the bail hearing, and, as such, I wanted to make sure that you
25 were aware that the government may factually make the same

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1 allegation in connection with sentencing. And, if
2 controverted, that might be something that we need to have a
3 Fatico hearing on, and perhaps you would argue to me that it is
4 not relevant conduct and perhaps Ms. Sassoon would argue that
5 it is. But one scenario is that the Court would agree that, if
6 established, that fact, awareness that the organization that
7 she was assisting engaged in homicides, was an aggravating and
8 relevant fact. I just want to make sure that you and she are
9 on notice that that is among the routes this could go.

10 I don't think there is anything more I can say. If
11 you want time with her, we can put over the plea until later
12 today, we can put it over to another day, or we could go to
13 trial. I am not putting a thumb on the scale but I don't want
14 surprise. That's why I raised this issue.

15 MR. BELL: Thank you, Judge. I just want to make
16 sure -- I just want a moment to make sure that after having
17 this sort of conversation in this manner, that my client
18 doesn't have any questions. So if I could just have a few --

19 THE COURT: Yes, go ahead.

20 (Pause)

21 MR. BELL: Thank you for the time. We are ready to go
22 forward.

23 THE COURT: You are ready to proceed, OK.

24 I will ask Ms. Rivas in the course of the plea
25 proceeding a question or two along the lines that I just

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1 covered with you. OK?

2 MR. BELL: Yes, your Honor.

3 THE COURT: All right.

4 So, Ms. Rivas, before I accept your guilty plea, I am
5 going to ask you certain questions so that I can establish to
6 my satisfaction that you wish to plead guilty because you are
7 guilty and not for some other reason. If you don't understand
8 any of my questions or you would like a further opportunity to
9 consult with Mr. Bell, will you please let me know?

10 THE DEFENDANT: OK.

11 THE COURT: All right. Mr. Smallman, would you kindly
12 place the defendant under oath?

13 THE CLERK: Sure.

14 Please rise and raise your right hand.

15 (The defendant was sworn through the interpreter)

16 THE COURT: You may be seated.

17 Mr. Bell, would you just kindly move the microphone a
18 little closer to your client. Thank you.

19 Ms. Rivas, do you understand that you are now under
20 oath, and that if you answer any of my questions falsely, your
21 answers to my questions may be used against you in another
22 prosecution for perjury?

23 THE DEFENDANT: Yes.

24 THE COURT: What is your full name?

25 THE DEFENDANT: Kelly Mary Rivas.

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1 THE COURT: How old are you?

2 THE DEFENDANT: 32.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: Second year of college.

5 THE COURT: Where was that?

6 THE DEFENDANT: I studied at Mid Tech.

7 THE COURT: In where?

8 THE DEFENDANT: Mid Tech.

9 THE COURT: Where is that located?

10 THE DEFENDANT: In Virginia.

11 THE COURT: In Virginia.

12 Have you ever been treated or hospitalized for any
13 mental illness?

14 THE DEFENDANT: No.

15 THE COURT: Are you now or have you recently been
16 under the care of a doctor or a psychiatrist?

17 THE DEFENDANT: No.

18 THE COURT: Have you ever been hospitalized or treated
19 for addiction to any drugs or to alcohol?

20 THE DEFENDANT: Yes, but years ago.

21 THE COURT: All right. Are you past that now?

22 THE DEFENDANT: That was about seven or eight years
23 ago.

24 THE COURT: OK. In the past 24 hours, have you taken
25 any drugs, medicine or pills or drunk any alcoholic beverages?

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1 THE DEFENDANT: No.

2 THE COURT: Is your mind clear today?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand what's happening in this
5 proceeding?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Bell, do you have any doubt as to your
8 client's competence to plead at this time?

9 MR. BELL: I do not, Judge.

10 THE COURT: How about you, Ms. Sassoon?

11 MS. SASSOON: I have no doubts, your Honor.

12 THE COURT: Based on her responses to my questions and
13 her demeanor as she appears before me, I find that Ms. Rivas is
14 competent to enter a plea of guilty at this time. Both counsel
15 concur in that result.

16 Ms. Rivas, have you had a sufficient opportunity to
17 discuss your case with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you had a sufficient opportunity to
20 discuss the particular charge to which you intend to plead
21 guilty, any possible defenses to that charge, and the
22 consequences of entering a plea of guilty?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you satisfied with your attorney's
25 representation of you, including in connection with reaching a

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1 plea agreement?

2 THE DEFENDANT: Yes.

3 THE COURT: I am now going to explain certain
4 constitutional rights that you have. You will be giving up
5 these rights if you enter a plea of guilty.

6 Under the Constitution and laws of the United States,
7 you are entitled to a speedy and a public trial by a jury on
8 the charge contained in the Indictment. Do you understand
9 that?

10 THE DEFENDANT: Yes.

11 THE COURT: At that trial you would be presumed to be
12 innocent, and the government would be required to prove you
13 guilty by competent evidence and beyond a reasonable doubt
14 before you could be found guilty. You would not have to prove
15 that you were innocent. And a jury of twelve people would have
16 to agree unanimously that you were guilty. Do you understand
17 that?

18 THE DEFENDANT: Yes.

19 THE COURT: At that trial and at every stage of your
20 case, you would be entitled to be represented by an attorney,
21 and if you could not afford one, one would be appointed to
22 represent you free of charge. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: During a trial, the witnesses for the
25 government would have to come to court and testify in your

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1 presence. Your lawyer could cross-examine the witnesses for
2 the government, object to evidence offered by the government
3 and, if you desired, issue subpoenas, offer evidence, and
4 compel witnesses to testify on your behalf. Do you understand
5 that?

6 THE DEFENDANT: Yes.

7 THE COURT: At a trial, although you would have the
8 right to testify if you chose to do so, you would also have the
9 right not to testify, and no inference or suggestion of guilt
10 could be drawn from the fact that you did not testify, if that
11 was what you chose to do. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: At trial, the government would have to
14 prove each and every part, or element, of the charge beyond a
15 reasonable doubt for you to be convicted of that charge. Do
16 you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that if you were
19 convicted at a trial, you would have the right to appeal that
20 verdict?

21 THE DEFENDANT: Yes.

22 THE COURT: Even now, even right now as you are in the
23 process of entering this guilty plea, you have the right to
24 change your mind, plead not guilty, and go to trial. Do you
25 understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: If you plead guilty and I accept your
3 plea, you will give up your right to a trial and the other
4 rights that I just described, there will be no trial, and I
5 will enter a judgment of guilty and sentence you on the basis
6 of your guilty plea after considering the submissions relating
7 to sentencing that I receive from you, your lawyer and the
8 government, as well as a presentence report prepared by the
9 Probation Department. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If you plead guilty, you will also have to
12 give up your right not to incriminate yourself, because I will
13 ask you questions today about what you did in order to satisfy
14 myself that you are guilty as charged. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Ms. Rivas, have you received a copy of the
17 Indictment containing the charges against you?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you read it?

20 THE DEFENDANT: Yes.

21 THE COURT: Has it been translated to you?

22 THE DEFENDANT: No.

23 THE COURT: Were you able to read it in English?

24 THE DEFENDANT: Yes.

25 THE COURT: OK. You were able to read English?

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1 THE DEFENDANT: Yes.

2 THE COURT: All right. And have you had a chance to
3 discuss the Indictment with Mr. Bell?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. Do you understand that you are
6 charged in Count One with the crime of conspiring to commit
7 extortion, in violation of the Hobbs Act, Title 18, United
8 States Code, Section 15 -- excuse me, Section 1951(b)(2). And
9 specifically that as part of that conspiracy, the government
10 alleges that you and your co-conspirators used actual and
11 threatened force, violence and fear to collect and attempt to
12 collect dues from members of MS-13.

13 THE DEFENDANT: Yes, I understand.

14 THE COURT: Ms. Sassoon, would you kindly state the
15 elements of that offense?

16 MS. SASSOON: Yes, your Honor.

17 If the case proceeded to trial, the government would
18 have to prove beyond a reasonable doubt that two or more
19 persons, including the defendant, agreed to commit extortion,
20 that the defendant knowingly and voluntarily joined in that
21 agreement, and, third, that the conspiracy had the possibility
22 or potential to affect interstate commerce.

23 The underlying elements of Hobbs Act extortion are,
24 first, that the defendant obtained property from another person
25 with that person's consent; second, that the defendant induced

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1 that consent by the actual or threatened use of force, violence
2 or fear; third, that the defendant's use of force, violence or
3 fear was wrongful; and, finally, that the defendant obtained
4 the property in a manner that affected interstate or foreign
5 commerce.

6 The government would also have to prove venue by a
7 preponderance of evidence here in the Southern District of New
8 York.

9 THE COURT: Thank you.

10 Mr. Bell, do you agree with Ms. Sassoon in her
11 recitation of those elements?

12 MR. BELL: Yes, Judge.

13 THE COURT: And, Ms. Rivas, did you hear and
14 understand Ms. Sassoon as she just set out the elements of the
15 offense?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you understand that if you were to
18 go to trial, the government would have to prove all of those
19 elements beyond a reasonable doubt?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that the maximum
22 possible penalty for Count One is 20 years' imprisonment?

23 THE DEFENDANT: Yes.

24 THE COURT: The maximum fine for Count One is the
25 greatest of \$250,000, twice the gross pecuniary gain derived

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1 from the offense or twice the gross pecuniary loss to people
2 other than you resulting from the offense? Do you understand
3 that?

4 THE DEFENDANT: Yes, I understand.

5 THE COURT: All right. Do you understand that for
6 pleading guilty to this offense you would face a maximum term
7 of supervised release of three years? Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Supervised release means that
10 you will be subject to monitoring when you are released from
11 prison. There are terms of supervised release with which a
12 person must comply. If you don't comply with them, you can be
13 returned to prison without a jury trial for all or part of the
14 term of supervised release imposed by the Court. Under those
15 circumstances, you would not be given any credit towards that
16 term for the time you served in prison as a result of your
17 sentence for this crime, nor would you necessarily be given any
18 credit towards that term for any time you had spent on
19 post-release supervision.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: For pleading guilty to this crime, you
23 will be required to pay a mandatory \$100 special assessment.
24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: All right. For pleading guilty to this
2 crime, you may be required to pay restitution to any person
3 injured as a result of your criminal conduct. Do you
4 understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: And for pleading guilty to this crime, you
7 may be compelled to forfeit any and all property constituting
8 and derived from proceeds obtained by your criminal conduct.
9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: And, counsel, I understand that as part of
12 the agreement in this case, you have presented to me a signed
13 consent preliminary order of forfeiture as to certain specific
14 property which the parties agree are properly forfeited.

15 Is that correct, Ms. Sassoon?

16 MS. SASSOON: Yes, your Honor.

17 THE COURT: All right. Ms. Rivas, is this your
18 signature on the order of forfeiture?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. And, Mr. Bell and Ms. Sassoon,
21 those are your respective signatures as well?

22 MS. SASSOON: Yes.

23 MR. BELL: Yes, Judge.

24 THE COURT: All right. I am executing right now the
25 order of forfeiture, which is in good order.

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1 Ms. Rivas, do you understand that if I accept your
2 guilty plea and adjudge you guilty, that may deprive you of
3 valuable civil rights such as the right to vote, the right to
4 hold public office, the right to serve on a jury, and the right
5 to possess any kind of firearm?

6 THE DEFENDANT: Yes.

7 THE COURT: Are you a United States citizen?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, under current law there are
10 Sentencing Guidelines as well as other factors set forth in the
11 sentencing statutes that judges must consider in determining
12 your sentence. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you spoken with Mr. Bell about the
15 Sentencing Guidelines and those other factors?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that the Court will not
18 be able to determine the guideline range that will form one
19 part of my determination what a reasonable sentence will be in
20 your case until after a presentence report has been prepared
21 and until you and until after you and your attorney and the
22 government all have had the chance to challenge any of the
23 facts reported in that presentence report prepared by the
24 Probation Department? Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand that even though the
2 parties in the plea agreement have agreed that the Sentencing
3 Guidelines call for a sentence of between 33 and 41 months'
4 imprisonment, the parties' agreement as to what the Sentencing
5 Guidelines recommend is not binding on the Probation Department
6 and it is not binding upon the Court?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that even after the
9 Court has determined what guideline range applies to your case,
10 the Court has the discretion under the current law to impose a
11 sentence that is higher or lower than the one recommended by
12 the Sentencing Guidelines?

13 THE DEFENDANT: Yes, I understand.

14 THE COURT: And were you listening when I had the
15 conversation with Mr. Bell a little earlier on about the
16 possibility that the Court might impose a sentence above the
17 guideline range or below the guideline range, depending on what
18 the facts show? You understand that?

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: Do you understand that one possibility is
21 that I will be persuaded that the facts recommend a sentence
22 below the guideline range?

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: And do you understand that another
25 possibility is that I will be persuaded that the facts support

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1 a sentence within the guideline range?

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: And do you understand that another
4 possibility is that I will conclude that the facts warrant a
5 sentence above the guideline range?

6 THE DEFENDANT: Yes, I understand.

7 THE COURT: All right. Do you understand that if your
8 attorney or anyone else has attempted to predict what your
9 sentence will be, their prediction could be wrong? No one --
10 not your attorney, not the government's attorney -- no one can
11 give you any assurance of what your sentence will be because
12 I'm going to decide your sentence, and I'm not going to do that
13 now and I really can't do that now. I'm going to wait until I
14 receive a presentence report prepared by the Probation
15 Department. I'm going to do my own independent calculation of
16 what the sentencing guidelines recommend. I'm going to study
17 very carefully what I'm sure will be very thoughtful sentencing
18 submissions by both parties. I'm going to study as well the
19 presentence report. Based on all those materials, I'm going
20 to, most of all, determine what a reasonable sentence is for
21 you based on all of the factors contained in the sentencing
22 statute, which is known as Section 3553(a).

23 Do you understand all of that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you discussed these issues and the

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1 overall sentencing process with Mr. Bell?

2 THE DEFENDANT: Yes.

3 THE COURT: Even if your sentence is different from
4 what your attorney or anyone else has told you it might be,
5 even if it is different from what you expect, even if it is
6 different from the advisory guideline range calculated in your
7 plea agreement with the government, you would still be bound by
8 your guilty plea and you would not be allowed to withdraw your
9 plea of guilty. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Has anyone threatened you or anyone else
12 or forced you in any way to plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: Counsel earlier indicated that there has
15 been a plea agreement entered into in this case. Is that
16 correct, Ms. Rivas?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. And, Ms. Sassoon, I see here
19 what is the signature of Michael Gerber, the Chief of the
20 Violent Organized Crime Unit, and the signature of the
21 Assistant United States Attorney Bell.

22 Is that your signature?

23 MS. SASSOON: It is, your Honor.

24 THE COURT: OK. And that is, as well, the signature
25 of Mr. Gerber?

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1 MS. SASSOON: It is.

2 THE COURT: And, Mr. Bell, is this your signature
3 dated today?

4 MR. BELL: Yes, Judge.

5 THE COURT: And, Ms. Rivas, is this your signature
6 dated today?

7 THE DEFENDANT: Yes.

8 THE COURT: Ms. Rivas, did you read this agreement
9 before you signed it?

10 THE DEFENDANT: Yes.

11 THE COURT: Was it translated to you?

12 THE DEFENDANT: No.

13 THE COURT: Did you read it in English?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you confident that your English
16 reading skills are up to the challenge of reading and
17 understanding that agreement?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Did you discuss the agreement
20 with your attorney before you signed it?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you believe you understood the
23 agreement at the time you signed it?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you willingly sign this agreement?

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1 THE DEFENDANT: Yes.

2 THE COURT: Did anyone force you to sign the
3 agreement?

4 THE DEFENDANT: No.

5 THE COURT: Do you have any agreement with the
6 government about your plea or your sentence that has been
7 omitted, that has been left out of this written agreement?

8 THE DEFENDANT: I don't understand.

9 THE COURT: Is there any agreement you have with the
10 government that is not contained in this agreement, that has
11 been left out?

12 MR. BELL: One moment, Judge.

13 (Pause)

14 Thank you.

15 THE COURT: OK. Ms. Rivas.

16 THE DEFENDANT: Yes.

17 THE COURT: Do you have any agreement with the
18 government that has been left out, that has been omitted from
19 this agreement?

20 THE DEFENDANT: No.

21 THE COURT: All right. Ms. Sassoon, would you briefly
22 summarize the material terms of the plea agreement?

23 MS. SASSOON: Yes, your Honor.

24 The plea agreement states that the defendant is
25 pleading guilty to the one count of the Indictment, which is

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1 conspiracy to commit extortion. It lays out the potential
2 penalties, which your Honor reviewed with the defendant already
3 during this proceeding.

4 In the plea agreement, the defendant admits the
5 forfeiture allegation and agrees to forfeit \$19,346.

6 The agreement sets out the parties' stipulated
7 guideline range, which includes an enhancement for threats of
8 bodily injury and a three-level enhancement for being a manager
9 or supervisor of the organization. The defendant also receives
10 acceptance of responsibility points. And based on a Criminal
11 History Category of I, it sets forth a guidelines' range of 33
12 to 41 months' imprisonment.

13 Under this plea agreement, the parties agree not to
14 seek a departure, but the agreement states that either party
15 can seek a below- or above-guideline sentence.

16 The agreement also contains an appellate waiver which
17 states that if the defendant receives a within or below
18 guidelines' sentence, she is waiving her right to appeal. But
19 the agreement does set forth that the defendant can still raise
20 Brady claims or ineffective -- sorry, that she waives her
21 right -- let me start over.

22 The defendant waives her right to raise a Brady or
23 Giglio claim, but she preserves the right to raise an
24 ineffective assistance of counsel claim.

25 Those are the primary provisions.

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1 THE COURT: Thank you, Ms. Sassoon.

2 Mr. Bell, are you in agreement with Ms. Sassoon's
3 summary of the terms which she covered?

4 MR. BELL: Yes, Judge.

5 THE COURT: And, Ms. Rivas, did you hear and
6 understand Ms. Sassoon as she described those terms?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: There is just one that I want to highlight
9 for you. Do you understand that under the agreement, you are
10 giving up your right to appeal or otherwise challenge your
11 sentence so long as I do not sentence you to more than 41
12 months in prison?

13 THE DEFENDANT: Yes, I understand.

14 THE COURT: Has anyone made any promise or done
15 anything other than what's contained in the plea agreement to
16 induce you to plead guilty?

17 THE DEFENDANT: No.

18 THE COURT: Has anyone made a promise to you as to
19 what your sentence will be?

20 THE DEFENDANT: No.

21 THE COURT: Do you still wish to plead guilty pursuant
22 to this agreement?

23 THE DEFENDANT: Yes.

24 THE COURT: Can you now tell me, Ms. Rivas, in your
25 own words what you did that makes you believe you are guilty of

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1 the charge in Count One of the Indictment?

2 THE DEFENDANT: I am going to read from this piece of
3 paper. I have it written down.

4 THE COURT: That is fine. Before you do, though, let
5 me ask you this. The piece of paper that is before you, is it
6 something that you have had a chance to review before this
7 moment?

8 THE DEFENDANT: What is written here is what I spoke
9 to my attorney about, about what I would like to say.

10 THE COURT: That's fine. I just want to make sure it
11 is something you've reviewed and are confident it's completely
12 truthful and accurate.

13 Is it completely truthful and accurate?

14 THE DEFENDANT: Yes.

15 THE COURT: Go ahead.

16 THE DEFENDANT: My English is not that good.

17 THE COURT: You need not speak in English. You can
18 speak in your native language.

19 The question is just tell me in your own words what
20 you did that makes you believe you are guilty of the charge in
21 the Indictment.

22 THE DEFENDANT: I am going to try to say it in
23 Spanish.

24 THE COURT: Thank you.

25 THE DEFENDANT: From 2013 until September '17,

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1 approximately, I agreed with other people to threaten one
2 person --

3 THE INTERPRETER: The interpreter needs to verify.

4 (Pause)

5 To threaten one person of La Mara.

6 THE COURT: One person? I didn't hear the
7 interpreter.

8 THE DEFENDANT: To threaten one person of La Mara.

9 MS. SASSOON: La Mara Salvatrucha?

10 THE DEFENDANT: Yes.

11 We threatened him with violence. We frightened him in
12 order to get money from that person.

13 THE INTERPRETER: The interpreter needs to verify.

14 THE DEFENDANT: From that person.

15 THE COURT: Are you done with your response to my
16 question?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Thank you. I just have a few
19 follow-up questions.

20 You said you were seeking to get money from this
21 person, is that right?

22 THE DEFENDANT: Yes.

23 THE COURT: Was that money dues to be paid to MS-13?

24 THE DEFENDANT: Yes.

25 THE COURT: And were you threatening the person with

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1 violence if that person did not pay those dues?

2 THE DEFENDANT: Yes.

3 THE COURT: And was it -- did you agree with other
4 people to threaten at least that person with violence as a
5 means of getting dues?

6 THE DEFENDANT: Yes.

7 THE COURT: Ms. Sassoon, can you give me a proffer as
8 to the Southern District of New York's connection to this?

9 MS. SASSOON: Yes, your Honor.

10 If the case proceeded to trial, we would have witness
11 testimony about the defendant traveling through the Southern
12 District of New York in furtherance of this conspiracy and for
13 the purpose of a meeting relating to MS-13 activity.

14 THE COURT: Thank you.

15 Ms. Rivas, did you hear what Ms. Sassoon just said?

16 THE DEFENDANT: Yes.

17 THE COURT: Did you travel through New York as part of
18 the conduct that you and the others agreed upon in connection
19 with threatening somebody to get MS-13 dues?

20 THE DEFENDANT: (In English) Give me one second.

21 THE COURT: Yes.

22 (Pause)

23 MR. BELL: Thank you, Judge.

24 THE DEFENDANT: Sorry.

25 THE COURT: Did you travel through New York in

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1 connection with this conspiracy?

2 THE DEFENDANT: (In English) Yes.

3 THE COURT: And just tell me a little more about what
4 you did, what purpose the travel through New York served?

5 MR. BELL: One second.

6 THE COURT: Mm-hmm.

7 (Pause)

8 THE DEFENDANT: Could you please repeat the question?

9 THE COURT: What purpose did the travel through New
10 York serve? Why did you travel through New York?

11 THE DEFENDANT: I only came here for two days only
12 once.

13 THE COURT: I'm going to ask you the same question.
14 What purpose did the travel through New York serve? Not how
15 long the trip was, but how did it relate to the conspiracy that
16 you have been describing to me?

17 THE DEFENDANT: Actually, nothing. I only came here
18 for a visit.

19 THE COURT: Ms. Sassoon, could you proffer more
20 concretely how the travel fit in?

21 MS. SASSOON: Yes. And perhaps Ms. Rivas is confused
22 by where in New York we are referring to, so --

23 THE COURT: Tell me what the facts are and I will
24 formulate a better question.

25 MS. SASSOON: So the defendant traveled to Long Island

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1 for the purpose of an MS-13 meeting, and to get to Long Island,
2 necessarily you have to travel through the Southern District of
3 New York.

4 THE COURT: OK. Thank you. Very helpful.

5 Ms. Rivas, did you travel to Long Island for an MS-13
6 meeting.

7 MR. BELL: Just a moment, Judge.

8 May I speak with Ms. Sassoon?

9 THE COURT: Of course.

10 (Pause)

11 MR. BELL: Just one moment, Judge.

12 THE COURT: Of course.

13 (Pause)

14 MS. SASSOON: Your Honor, after conferring with
15 defense counsel, the government would like to make an
16 alternative proffer of another way of establishing venue.

17 THE COURT: Be my guest.

18 MS. SASSOON: Which is that the defendant used the
19 proceeds of the extortion to transmit material to other MS-13
20 members within the Southern District.

21 THE COURT: All right. Ms. Rivas, did you hear what
22 Ms. Sassoon just said?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you do that?

25 THE DEFENDANT: (In English) Yes, sir.

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1 THE COURT: I need you to be a little more
2 descriptive. I need you to explain to me what you did with the
3 money and how it related to the Southern District of New York.
4 I need to make sure that this is a proper district for this
5 prosecution.

6 THE DEFENDANT: I bought things that they needed on
7 Amazon.

8 THE COURT: And did you do that in this district?

9 THE DEFENDANT: Not exactly but I would send it here.

10 THE COURT: OK. So, the dues money that you obtained
11 by threats of violence, you used that money -- you sent that
12 money, then, to people here in this district?

13 THE DEFENDANT: Yes.

14 THE COURT: Ms. Sassoon, does that accord with your
15 understanding of the facts?

16 MS. SASSOON: Yes. By sending the proceeds, I think
17 what she conveyed is that she sent the proceeds in the form of
18 things purchased on Amazon.

19 THE COURT: I see. Very good.

20 Ms. Rivas, did you hear what Ms. Sassoon just said?

21 THE DEFENDANT: No.

22 THE COURT: All right. She said that you used the
23 dues money that you obtained through threats of violence and
24 you bought things on Amazon and sent them into this district,
25 to people in this district. Is that correct?

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1 THE DEFENDANT: Yes.

2 MS. SASSOON: And, your Honor, we received records
3 from Amazon that confirm that.

4 THE COURT: OK. And, Ms. Sassoon, were the people to
5 whom this was sent in the district, do you understand them to
6 have been associated with MS-13?

7 MS. SASSOON: Yes, your Honor.

8 THE COURT: Ms. Rivas, is that correct?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Do all counsel agree that on
11 this factual proffer, there is a sufficient nexus to this
12 district for the prosecution to proceed, for the plea to be
13 accepted here?

14 MS. SASSOON: Yes, your Honor.

15 MR. BELL: Yes, Judge.

16 THE COURT: And, Ms. Sassoon, I think we may have just
17 covered it, but just to play it absolutely safe, can you
18 proffer to me how the interstate commerce element of the Hobbs
19 Act is satisfied?

20 MS. SASSOON: Yes, your Honor. The government would
21 actually satisfy that element by establishing that Ms. Rivas
22 extorted members whose dues came in part from illegal
23 activities, such as the interstate sale of narcotics, and under
24 the case law that would satisfy the interstate nexus.

25 THE COURT: Mr. Bell, do you agree with that?

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1 MR. BELL: Yes, your Honor.

2 THE COURT: Both factually and legally?

3 MR. BELL: Yes, your Honor.

4 THE COURT: And, Ms. Rivas, did you hear what
5 Ms. Sassoon just said?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you agree with that?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. When you did these acts, did
10 you know that what you were doing was wrong, meaning
11 threatening violence as a way of getting MS-13 dues?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you know you were committing a crime?

14 THE DEFENDANT: Yes.

15 THE COURT: Does government counsel agree that there
16 is a sufficient factual predicate for a guilty plea?

17 MS. SASSOON: Yes, your Honor.

18 THE COURT: Does defense counsel?

19 MR. BELL: Yes, Judge.

20 THE COURT: Mr. Bell, do you know of any valid defense
21 that would prevail at trial or any reason why your client
22 should not be permitted to plead guilty?

23 MR. BELL: I do not, Judge.

24 THE COURT: Ms. Rivas, are you pleading guilty today
25 voluntarily and of your own free will and because you are in

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1 fact guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Ms. Sassoon, can you represent that had
4 the case gone to trial, the government had sufficient evidence
5 of each element to establish a conviction?

6 MS. SASSOON: Yes, your Honor.

7 THE COURT: Ms. Rivas, because you acknowledge that
8 you are in fact guilty as charged in Count One of the
9 Indictment, because I'm satisfied that you know of your rights,
10 including your right to go to trial, because I'm satisfied that
11 you are aware of the consequences of your plea, including the
12 sentence that may be imposed, and because I find that you are
13 voluntarily pleading guilty, I accept your guilty plea and
14 enter a judgment of guilty on the one count to which you have
15 pled guilty.

16 Now, the next step in your case is going to involve
17 the sentencing process. I am going to ask you to pay close
18 attention to what I'm about to say.

19 The Probation Department is going to want to interview
20 you in connection with the presentence report that it prepares.
21 If you choose to speak with the Probation Department, please
22 make sure anything you say to them is truthful and accurate. I
23 read those presentence reports carefully. And along with the
24 submissions I get from government counsel and defense counsel,
25 they are very important to me in determining what a reasonable

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1 sentence is in the particular case.

2 You and Mr. Bell have a right to examine the report
3 and to comment on it at the time of sentencing. I urge you to
4 read it. I urge you to discuss it with Mr. Bell before
5 sentencing. In the event there are any mistakes in the report,
6 please point them out to Mr. Bell so that he can bring them to
7 my attention before sentencing.

8 Will you agree to do that?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Bell, I take it this is not a case in
11 which you are seeking an expedited sentence?

12 MR. BELL: No, sir.

13 THE COURT: All right. How about Wednesday,
14 January 22nd, at 10 a.m.?

15 MS. SASSOON: Yes, your Honor.

16 MR. BELL: At 10 a.m.?

17 THE COURT: Yes, 10 a.m. That works?

18 MR. BELL: Yes, your Honor.

19 THE COURT: Mr. Bell, you must arrange for your client
20 to be interviewed by the Probation Department within the next
21 two weeks.

22 Government, you should provide your case summary to
23 the Probation Department within the next two weeks.

24 Defense submissions are due two weeks before
25 sentencing. The government's submission is due one week

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1 before.

2 Is there anything further from the government?

3 MS. SASSOON: No. Thank you, your Honor.

4 THE COURT: All right. Thank you.

5 Anything further from the defense?

6 MR. BELL: No. Thank you, your Honor.

7 THE COURT: All right. Be well. Thank you.

8 We stand adjourned.

9 THE CLERK: All rise.

10 (Adjourned)

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